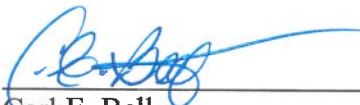


BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2018-212-WS
CERTIFICATE OF SERVICE

I, **Carl E. Bell**, hereby certify that I have, on this **23rd day of July 2018**, served the *Answer and Motion to Dismiss and Suspend Schedule*, upon the parties listed below by U.S. Mail and Email to the following person(s) and addresses:

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c.walz@stjfd.org
St. Johns Fire District
Post Office Box 56
Johns Island, SC 29457

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Columbia, South Carolina

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2018-212-W

Colleen Walz, Chief of St. John's Fire
 District, Complainant/Petitioner v. Kiawah
 Island Utility, Incorporated,
 Defendant/Respondent

**MOTION TO DISMISS AND SUSPEND
 SCHEDULE**

Kiawah Island Utility, Inc. (“KIU” or “Company”) moves to dismiss the Complaint in the above captioned matter, and requests suspension of the schedule for prefilings testimony and other responsive pleadings until this motion is decided. Complainant, Colleen Walz (“Walz”) challenges a fire hydrant service charge approved by the Commission in KIU’s last rate case (“Hydrant Charge”). The Hydrant Charge is paid by the St. John’s Fire District, which provides fire service to an area that includes KIU’s service territory. Walz does not allege, nor did the Office of Regulatory Staff find in its investigation of her Complaint, that KIU is not charging a legally authorized charge.¹ Instead, Walz requests the Hydrant Charge be charged to KIU’s water service customers instead of to the St. John’s Fire District.

The Complaint is untimely. Walz challenges a charge approved by the Commission in 2017, a charge that was first approved by the Commission more than 30 years ago in 1984 and in six rate cases thereafter.² In the last rate case, in 2017, the Commission set rates after holding hearings in which it considered testimony from the Company, the Company’s customers, the Town

¹ See letter of Chad Campbell, May 9, 2018, at Exhibit A.

² Order 1984-587, Docket 1984-68-WS; Order 1990-1080, Docket 1990-49-WS; Order 1997-004, Docket 1996-168-WS; Order 2012-98, Docket 2011-317-WS; Order 2017-277(A); Docket 2016-222-WS.

of Kiawah Island, and the Office of Regulatory Staff concerning its audit of the Company's books and its review of the Company's operations. In addition to the intervenors, the public was given the opportunity to testify at a local public hearing on February 7, 2017, and at a final hearing on March 21, 2017. Order 2017-277(A), pp. 3-4. Notice was published on December 3, 2016, informing the public of the opportunity to petition for intervention and oppose the requested charges.³ Walz did not avail herself of this opportunity. She should not be allowed to effectively reopen the last rate case because she failed to timely exercise her rights.

Also, Walz's Complaint can only be resolved in a rate case. The gravamen of her Complaint is that KIU's customers, instead of the St. John's Fire Department, should bear the cost of providing hydrant service. This is an issue of rate design. Assuming for the sake of argument that Walz were to prevail, the lost revenue from the Hydrant Charges, which is significant, would have to be absorbed by other customers, and require an increase in their rates. This sort of redistribution can only be achieved in a rate case, not in the confines of a consumer complaint. The Commission has dismissed analogous complaints, explaining: "this [requested] change would result in increases in monthly bills to some customers and decreases in monthly bills for others, such a revision would affect all of [the company's] rate payers and could, therefore, only be addressed in a general rate making proceeding."⁴ The Commission should likewise dismiss this Complaint.

The Complaint is also barred by the doctrine of laches. Walz had notice of the proceedings in which the Hydrant Charge was approved – the last rate case – but failed to exercise her right to petition for intervention. In the context of that rate case, the Commission approved tariffs, including the Hydrant Charge, in amounts sufficient to meet KIU's revenue requirement. If Walz

³ See Affidavit of Publication filed Docket 2016-222-WS dated December 28, 2016

⁴ See Order 2010-111, Dockets 2009-39-W 2009-75-WS, 2009-101-W, 2009-102-W.

is now allowed to pursue her claim, the Company will be prejudiced by losing the Hydrant Charge revenues, the expense of litigating this claim, and KIU's customers would be prejudiced if they are forced to absorb the cost of the hydrant service. Richey v. Dickinson, 359 S.C. 609, 612 (S.C. Ct. App. 2004).

For the foregoing reasons, KIU respectfully requests, in the interest of judicial economy, the Commission suspend the schedule for prefiling testimony and other responsive pleadings until this motion is decided. KIU also prays the Commission dismiss the Complaint.

Respectfully submitted,

Digitally signed by Charles L.A.
Terreni
Location: Columbia, S.C.
Date: 2018-07-23 10:33-04:00

Date: July 23, 2018

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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2018-212-W

Colleen Walz, Chief of St. John's Fire
District, Complainant/Petitioner

v.

Kiawah Island Utility, Incorporated,
Defendant/Respondent

ANSWER

Defendant Kiawah Island Utility, Inc. ("KIU" or "Company) answers the above captioned Complaint of Colleen Walz as follows:

- 1) KIU denies each allegation not specifically admitted herein.

As to Page 1 of the Complaint

- 2) KIU has no direct knowledge of the actions taken by the St. John's Fire District ("SJFD") Commission members on June 11, 2018 as reported in the Complaint and the accompanying motion but admits the same on information and belief.

- 3) KIU admits the present Commission approved charge for hydrant service is \$134.79 per year.

- 4) KIU admits that it provides service to SJFD for 494 hydrants and the service is billed pursuant to the Commission approved tariff.

- 5) KIU admits SJFD is a special purpose district created by the General Assembly.

6) KIU admits parts of John's Island, Wadmalaw Island and Kiawah Island have experienced growth since 1959, and that parts of John's Island have been annexed by the City of Charleston.

7) KIU denies the allegations in the second paragraph of the Complaint. Specifically, KIU denies that it has "rented" hydrants to SJFD. Instead, KIU would show it began charging a hydrant charge pursuant to its Commission approved tariff in 1984 (*see* Order 1984-587). The rate approved in Order 1984-587 was \$75 per year per fire hydrant.

8) KIU has no knowledge of a 1979 agreement with the SJFD and therefore denies the same.

9) KIU denies Kiawah Island did not have water service in 1979; KIU would show it was providing service to the island at that time.

10) KIU admits the original charge for hydrant service was \$75 per year per fire hydrant, and that this rate has changed several times in the intervening years. KIU denies the manner in which it provides fire hydrant service is "obsolete".

As to Page 2 of the Complaint

11) KIU is unaware of the "20 year" term referred to by Walz and denies the same. KIU only provides fire hydrant service according to the terms approved by the Commission.

12) KIU denies "infrastructure costs are now reimbursed by developers"; KIU has incurred substantial expense in the construction and maintenance of its system. Furthermore, contributions in aid of construction ("CIAC") are not considered in establishing KIU's rates and charges.

13) KIU admits the Town of Kiawah Island is an incorporated political subdivision which has "upscale" facilities within its boundaries.

14) KIU admits that it is, and always has been, a private, investor-owned, utility that provides services at Commission approved rates designed to give KIU the opportunity to recover the cost of operating the utility and earn a reasonable operating margin for the Company.

15) KIU would show it purchases water from the St. John's Water Company, a wholesale water customer of the Charleston Water System.

16) KIU denies "there is no rational relationship between the amount charged and the [hydrant] services rendered" and would show the amount of water that flowed through the fire hydrants in a year is not an accurate indicator of the cost of providing fire hydrant service.

17) KIU denies the residents of three islands that are part of the SJFD territory, but not part of the Town of Kiawah, are taxed for the benefit of the latter's residents. KIU would show that its customers reside in the SFJD and pay substantial taxes to Charleston County, which in turn funds the SJFD allowing it to provide fire service throughout its territory, including those parts that do not have fire hydrants and/or water service.

18) KIU denies that its fire hydrant charges are not just and reasonable or fair and denies the fire hydrant charges should be eliminated forcing KIU's customers to bear the entire cost of fire hydrant service.

FOR A FIRST AFFIRMATIVE DEFENSE
(*Laches*)

19) KIU further answers Walz's Complaint should be dismissed according to the doctrine of laches.

20) Walz had notice of KIU's last rate case (Docket No. 2016-222-WS) in which the latest charge for fire hydrant service was submitted to and approved by the Commission.

21) Walz failed to petition to intervene in the last rate case and raise her concerns regarding the rates for fire hydrant service.

22) Walz did not avail herself of the opportunity to testify at the public hearing held by the Commission on Kiawah Island or at the merits hearing and voice her concerns.

23) To permit Walz to pursue her untimely claims would prejudice KIU because it would be forced to re-examine its charges outside of a rate case, and because the relief sought by Walz – elimination of the fire hydrant charge and imposition of the cost of the fire hydrants on KIU's customers – by its nature would require the Commission to notice a general rate case.

WHEREFORE, KIU prays the Commission deny the Complaint with prejudice.

Respectfully submitted,
Digitally signed by Charles L.A. Terreni
Location: Columbia, S.C.
Date: 2018-07-23 10:29-04:00

Date:

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